

JAN 16 1987

JOSEPH F. SPANIOLO, JR.
CLERK

(2)
No. 86-1028

In the Supreme Court of the United States

OCTOBER TERM, 1986

ROYAL NETHERLANDS STEAMSHIP COMPANY,

Petitioner,

—against—

ELIDA QUINTO de GARCIA,

Respondent.

**BRIEF OF RESPONDENT IN OPPOSITION TO WRIT
OF CERTIORARI TO THE FLORIDA THIRD
DISTRICT COURT OF APPEAL**

HORTON, PERSE & GINSBERG

ARNOLD R. GINSBERG

(Counsel of Record)

and

WILLIAM HUGGETT, ESQUIRE

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Attorneys for Respondent

34pp

I.

QUESTION PRESENTED

The respondent respectfully restates the "QUESTION PRESENTED" so as to have it more accurately reflect the precise issues before the Court under the terms and circumstances of this case [See: Supreme Court Rules, Rule 21.1(a)]:

A.

WHETHER THE OPINION OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT OF FLORIDA (1) IS IN DIRECT CONFLICT WITH ANY APPLICABLE DECISION OF THIS COURT, OR (2) DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT YET BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The respondent would further suggest there exists no compelling reason for this Court to review the merits of this case as the determinative issue will ultimately inquire:

B.

WHETHER THE TRIAL COURT GROSSLY ABUSED ITS DISCRETION IN DENYING—AS A DISCOVERY SANCTION—THE PETITIONER'S (DEFENDANT'S) MOTION TO DISMISS WHERE THE PETITIONER REPEATEDLY AND INTENTIONALLY REFUSED TO COMPLY WITH LAWFUL ORDERS OF COURT REQUIRING DISCOVERY ON THE ISSUES OF FORUM NON CONVENIENS, CHOICE OF LAW AND PERSONAL JURISDICTION.

II.

PARTIES/INTRODUCTION

The respondent, ELIDA QUINTO DE GARCIA, as mother and as personal representative of the Estate of Carlos Enrique Dominguez Quinto, deceased, for and on behalf of the Estate of Carlos Dominguez Quinto, and on behalf of the decedent's two sons, lawful claimants, Marlon and Eswan, was the plaintiff in the trial court, was the appellee on appeal to the District Court of Appeal, Third District, and was the respondent in the certiorari proceedings to the Florida Supreme Court. The petitioner was the defendant/appellant/petitioner. In this brief the parties will be referred to as the petitioner and the respondent and, alternatively, as "ROYAL NETHERLANDS" and as "QUINTO." The symbols "A" and "SA" will refer to the petitioner's appendix and the appendix accompanying this brief, respectively. All emphasis has been supplied by counsel unless indicated to the contrary.

III

III.

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IV.

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Other Authorities:

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V.

STATEMENT OF THE CASE

With all due respect to what the petitioner has recited in its "STATEMENT" and with further recognition of the contentions and arguments advanced in that portion of the petition denominated "REASONS FOR GRANTING THE WRIT", respondent suggests that *neither* the issue petitioner advances nor the basis upon which the Florida courts entered their rulings and decisions should be viewed in the abstract! As the Florida District Court of Appeal, Third District, stated:

* * *

"Defendant moved to dismiss the complaint for lack of personal and subject matter jurisdiction. *The trial court ordered that initial discovery would be limited to jurisdictional questions only.* Defendant failed to comply with this and several other orders of the trial court directing defendant to provide information pertinent to the issue of personal jurisdiction. After a hearing on plaintiff's motion for default, the trial court denied defendant's motion to dismiss, imposed personal jurisdiction as a *sanction* for the discovery violations and ordered defendant to file its answer. . ."

(A. 2).

* * *

Hence, this Court can clearly see that *what* the petitioner now complains about to this Court evolved not because the trial court ruled (one way or the other) on issues of jurisdiction, choice of law or forum non conveniens BUT BECAUSE THE DEFENDANT WOULD NOT, DID NOT AND REPEATEDLY REFUSED TO COMPLY WITH LAWFUL DISCOVERY ORDERS OF COURT which conduct *precluded* the trial court from considering, examining

and ruling upon all forum non conveniens issues! In point of fact, the District Court of Appeal, Third District, affirmed the trial court using as authority for its ruling this Court's decision in *Insurance Corp. of Ireland, Ltd. v. Compagnie Des Dauxites De Guinea*, 456 U.S. 694, 72 L. Ed. 2d 492, 102 S. Ct. 2099 (1982).

The respondent would herein note that the starting point for the correctness vel non of the petitioner's argument must lie not with the "QUESTION PRESENTED" (as phrased by the petitioner) nor with the facts as petitioner *now* asserts them to be but rather with recognition of the fact that when the factual issues *should have been* considered:

A. Petitioner violated or repeatedly ignored numerous lawful orders of the trial court so that it would not have to "open up" its records to scrutiny (SA. 1-13);

B. Petitioner refused to produce any and all evidence concerning its contacts with the State of Florida or the United States (SA. 1-13). As a consequence the trial court *could not* (and subsequently did not) weigh, balance, consider, evaluate or rule upon questions concerning choice of law, forum non conveniens, minimum contacts, connexity, personal jurisdiction and any factual basis concerning the existence vel non of the subject cause of action;

C. [When the petitioner *should have raised* legal issues pertaining to the propriety of the sued upon cause of action] petitioner (for reasons known only to it) did not argue the issue to the Florida trial court: As the appellate court noted:

"While there were several instances during the proceedings below where defendant indicated that

Guatemalan or Dutch law, rather than United States general maritime law, might apply, the issue was never formally presented to the trial court. . . . In any event, the failure to raise the issue properly below precludes our consideration of it here. . . ." (A. 4).

In addition, legal argument pertaining to the existence vel non of the (now challenged) cause of action was never timely raised in the trial court nor was preservation of the issue attempted:

"We note that, at the moment, this argument is moot since the trial court vacated the award to the estate on the grounds of jury confusion. We *further note* that this argument was raised for the first time in a post-trial motion. The jury was instructed on estate damages without any objection by the defendant. Defendant's failure to bring this argument to the attention of the trial court places this issue outside the scope of our review." (A. 5).

The respondent reserves the right to argue the significance of the above events in the argument portion of this brief.

VI.

SUMMARY OF ARGUMENT

The petition for writ of certiorari should be denied. It is important to note that *none* of the many cases relied upon and cited by petitioner deals with the instant subject matter, to-wit: Trial court authority to enter sanctions as a consequence of a party litigant's *repeated failure* to comply with lawful (jurisdictional) discovery orders of court. The subject petitioner is (and always has been) *two steps away* from any merits consideration:

A. First, the petitioner has not demonstrated "conflict" in any pertinent regard. There is no conflict between the opinion herein sought to be reviewed and the cases cited in the subject petition. Factually, this case deals with the petitioner's *refusal* to comply with discovery orders and the resultant *inability* of the respondent to litigate the issues of personal jurisdiction, forum non conveniens, and choice of law. Since there is no conflict, the petition for certiorari should be denied;

B. Second, the petitioner is simply wrong in the arguments advanced. Petitioner *cannot reach* the merits of any issue arising out of "forum non conveniens", "choice of law" or "subject matter jurisdiction" facts because this case is in the posture in which it is as a *direct consequence* of petitioner's obdurate refusal to obey the lawful orders of a Florida trial court. Petitioner comes to this Court and argues that the state courts *failed to follow* substantive law! Petitioner fails (understandably) to (want to) acknowledge (to this Court) that it kept the trial court from resolving *potential* substantive issues by repeatedly *ignoring* respondent's requests for discovery and ignoring numerous trial court orders which—if complied with—would either have produced evidence on the issues or preserved petitioner's right to litigate the issues! Because the petitioner refused to comply with lawful orders of court, and because petitioner chose to follow a course of conduct which precluded the respondent from litigating an issue, the petitioner should not be heard to complain *under either* Florida or federal substantive or procedural law.

VII.

ARGUMENT**(IN OPPOSITION TO THE PETITIONER'S
REASONS FOR GRANTING THE WRIT)**

THE FLORIDA TRIAL COURT DID NOT ABUSE ITS DISCRETION (GROSSLY OR OTHERWISE) IN DENYING—AS A DISCOVERY SANCTION—THE PETITIONER'S MOTION TO DISMISS WHERE THE PETITIONER REPEATEDLY AND INTENTIONALLY REFUSED TO COMPLY WITH LAWFUL ORDERS OF COURT REQUIRING DISCOVERY ON THE ISSUES OF FORUM NON CONVENIENS, CHOICE OF LAW AND PERSONAL JURISDICTION. AS A CONSEQUENCE THE OPINION OF THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT, IS NEITHER IN DIRECT CONFLICT WITH ANY APPLICABLE DECISIONS OF THIS COURT NOR DID IT DECIDE AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT YET BEEN SETTLED BY THIS COURT.

At pages 6 and 7 of the subject petition the petitioner, after citing to numerous federal cases which have dealt generally with the question of remedies under federal maritime law for tortious deaths, concludes:

"The Florida Court of Appeals' decision below adds to the body of confused, conflicting lower court opinions on the important question of federal law which has not been, but should be, settled by this Court in executing its ' . . . responsibility for fashioning the controlling rules of admiralty law.'" (Petition, page 7).

The respondent would respectfully suggest to this Court that the petitioner: is wrong in its analysis of the subject issue; again ignores the fact that as a consequence of its obdurate refusal to respond to lawful orders of a trial court it has lost its privilege to argue the merits of forum non conveniens and choice of law issues; and, as a consequence, the subject petition for writ of certiorari should be denied.

Prior to this Court's opinion in *Insurance Corp. of Ireland, Ltd. v. Compagnie Des Dauxites De Guinea*, supra, there existed a myriad of cases espousing conflicting opinions concerning whether or not a plaintiff suing an allegedly "foreign" defendant in the jurisdiction of that plaintiff's choice was required to make an independent showing of jurisdiction where, after the defendant sued refused to comply with jurisdictional discovery, the trial court deemed it necessary, as an appropriate sanction, to enter an order *denying* the defendant's motion to dismiss. In putting to rest any argument that a defendant can successfully *stonewall* a jurisdictional matter by *ignoring* lawful orders of court and in overruling *all* precedent to the contrary, this Court, in construing, interpreting and applying Rule 37 of the Federal Rules of Civil Procedure, specifically held that a trial court's action in establishing personal jurisdiction as a sanction for the failure to comply with discovery orders under the Rules of Civil Procedure *did not* violate due process even as to *jurisdictional matters*:

" . . . The expression of legal rights is often subject to certain procedural rules: the failure to follow those rules may well result in a curtailment of the rights. Thus, the failure to enter a timely objection to the personal jurisdiction constitutes, under Rule

12(h)(1), a waiver of the objection. A SANCTION UNDER RULE 37(b)(2)(A), CONSISTING OF A FINDING OF PERSONAL JURISDICTION, HAS PRECISELY THE SAME EFFECT. AS A GENERAL PROPOSITION, THE RULE 37 SANCTION APPLIED TO A FINDING OF PERSONAL JURISDICTION CREATES NO MORE OF THE DUE PROCESS PROBLEM THAN THE RULE 12 WAIVER. Although 'a court cannot conclude all persons interested by its mere assertion of its own power', not all rules that establish legal consequences to a party's own behavior are 'mere assertions' of power." 456 U.S. at pp. 705, 706.

The facts as found in *Insurance Corp. of Ireland*, supra, are not complex. In a suit involving foreign defendants, defenses of lack of in personam jurisdiction and forum non conveniens were raised. The plaintiff filed a discovery request in an attempt to establish jurisdictional facts. After defendant failed to comply with discovery orders, the trial court gave the defendant sixty more days to produce the requested information and warned that it would assume jurisdiction if the defendant did not do so. Several months later the Court, after concluding that the requested material had not been produced, imposed the threatened sanction—the foreign insurer was subject to the in personam jurisdiction of the court under the authority of Rule 37 of the Federal Rules of Civil Procedure. That rule (as does Florida Rule of Civil Procedure 1.380) authorizes a court, as a sanction for the defendant's failure to comply with discovery, to order that the matters (regarding which the orders were made) shall be taken as established (for purposes of the action in question). The United States Court of Appeals for the Third Circuit affirmed. Because the United States

Court of Appeals for the Fifth Circuit had previously indicated a contrary belief, this Court accepted review and ultimately identified the issue:

MAY A DISTRICT COURT, AS A SANCTION FOR FAILURE TO COMPLY WITH A DISCOVERY ORDER DIRECTED AT ESTABLISHING JURISDICTIONAL FACTS, PROCEED ON THE BASIS THAT PERSONAL JURISDICTION OVER THE RECALCITRANT PARTY HAS BEEN ESTABLISHED?

In rejecting all of the arguments advanced—arguments based on due process, procedural deficiencies, unfairness of the remedy, etc., this Court noted that the manner in which a trial court determines whether it has personal jurisdiction may include a variety of legal rules and presumptions, as well as straightforward fact finding. This Court further noted that the mere use of procedural rules does not, in itself, violate a defendant's due process rights. Recognizing that what the defendant (therein) sought to do was to contort and make complex a situation which was, at all times relevant, a "fairly straightforward matter" [See: *Insurance Corp. of Ireland*, supra, 456 U.S. at page 696], this Court, citing to prior precedent (regarding the proper scope and application of the sanction provisions of the Federal Rules of Civil Procedure) stated:

"The preservation of due process was secured by the presumption that the refusal to produce evidence material to the administration of due process was but an admission of the want of merit in the asserted defense." 456 U.S. at p. 705.

This Court further recognized that if there was no abuse of discretion in the application of the rule sanction, then the sanction would constitute nothing more than the in-

vocation of a legal presumption, or what is the same thing, the finding of a constructive waiver!

The arguments now advanced by the subject petitioner should not be reviewed on the merits. This is so because since the petitioner *never complied* with the respondent's lawful requests for discovery and *because* the petitioner *ignored* trial court orders directing compliance, the order denying the petitioner's motion to dismiss was entered. The petitioner's arguments are premised upon conclusions, the basis for which the petitioner would not let anyone discern. It must be emphasized and reemphasized that the trial court denied the petitioner's motion to dismiss *not because* the trial court "passed upon" the factual circumstances—or even because the trial court found that the petitioner's contacts were "sufficient" or "insufficient"—but because the petitioner would not allow anyone access to the information which would have resolved the issue.

With the above as a proper backdrop to the circumstances of this case, this respondent can now concur (with the petitioner) that the subject cause involves principles of federal admiralty jurisdiction. The respondent disputes now—as she did below—that the petitioner is entitled to ignore lawful orders of court simply because this case brings into play "the admiralty." In admiralty a defendant *cannot ignore* lawful discovery orders so as to be able to argue to a court (be it state or federal) its entitlement to dismissal based upon "forum non conveniens", "choice of law", "no personal jurisdiction", etc., grounds. As recognized by the Court in *Blanco v. Carigulf Lines, Ltd.*, 632 F. 2d 656 (5th Cir., 1980):

"Plaintiff is not required to rely exclusively upon a defendant's affidavit for resolution of the jurisdic-

tional issue where that defendant has failed to answer plaintiff's interrogatories specifically directed to that issue. TO HOLD OTHERWISE WOULD PERMIT AN ADVANTAGE TO A DEFENDANT WHO FAILS TO COMPLY WITH THE RULES OF DISCOVERY." 632 F. 2d at p. 658.

This Court can see from an examination of the decision herein sought to be reviewed:

A. That the District Court of Appeal of Florida, Third District, *acknowledged* that in matters of this type trial courts (both state and federal) have authority to enter appropriate (*jurisdictional*) sanctions where a party litigant repeatedly and intentionally refuses to comply with lawful orders of Court;

B. That the petitioner's reference to "subject matter jurisdiction" is now (as it has always been) without merit. Title 28 of the United States Code, § 1333, provides "savings to suitors" and grants to state courts "subject matter" jurisdiction to entertain cases "in admiralty." Hence, *at all times*, Florida courts have had "traditional" subject matter jurisdiction. See, for example: A. 3 and A. 4, and cases cited therein;

C. Questions relating to forum non conveniens, choice of law and venue [forum non conveniens and "subject matter" jurisdiction, the terms being interchangeable for purposes of determining whether or not a trial court should "keep a case", See: *Lauritzen v. Larsen*, 345 U.S. 571, 73 S. Ct. 921, 97 L. Ed. 1254 (1953)] were precluded from trial court evaluation, ruling and appellate court review when the petitioner refused (for over a year) to comply with the respondent's discovery requests, as well as trial court orders (both) agreed to and judicially entered upon motion successfully made and granted (SA. 1-13).

An understanding of the above puts to rest the contention of the petitioner that the Florida Court of Appeal's decision "adds to the body of confused, conflicting lower court opinions on the important question of federal law which has not been, but should be, settled by this Court" as neither the trial court nor the District Court could (as the petitioner repeatedly intimates) apply the eight (factual) considerations of *Lauritzen v. Larsen*, supra, or its progeny, as long as the petitioner kept to itself evidence bearing on the issues. Both the trial court and the District Court adhered to "the admiralty" and would not yield to the petitioner's desire to gain an unfair advantage. *Blanco v. Carigulf Lines, Ltd.*, supra.

At pages 6 and 7 of its brief the petitioner argues that no matter where an admiralty suit is brought (state or federal court), the case "shall be determined by the maritime law" and not by the common law standards of the state. Respectfully, the District Court did, contrary to the petitioner's contentions, apply United States "general maritime law." See, for example, *Blanco v. Carigulf Lines, Ltd.*, supra, and cases cited therein. In point of fact, the petitioner does not like how the law was applied. However, federal maritime law was applied. In admiralty (as in other situations) a petitioner cannot withhold evidence bearing on either a jurisdictional or substantive issue and at the same time claim entitlement to relief. This petitioner tried to do this, this petitioner was sanctioned, and there exists no improper application of either state or federal law. The petitioner's arguments are patently without merit, there exists no conflict and the petition for writ of certiorari should be denied.

VIII.

CONCLUSION

It is respectfully submitted that for the reasons stated herein it can be concluded that the petitioner has failed to demonstrate any compelling reason for this Court to exercise its discretion and review this cause on the merits. The subject petition for writ of certiorari should be denied.

Respectfully submitted,

HORTON, PERSE & GINSBERG

and

WILLIAM HUGGETT, ESQUIRE

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66 West Flagler Street

Miami, Florida 33130

(305) 358-0427

Attorneys for Respondent

By: ARNOLD R. GINSBERG

IX.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent in Opposition to Writ of Certiorari to the Florida Third District Court of Appeal, was served, by U.S. mail, this 15th day of January, 1987, on the following counsel of record:

WILLIAM M. KIMBALL, ESQ.

233 Broadway

New York, New York 10007

WILLIAM R.P. HOGAN, ESQ.

JOHN W. WALL, ESQ.

FREEHILL, HOGAN & MAHAR

80 Pine Street

New York, New York 10005

ARNOLD R. GINSBERG



SA. 1

APPENDIX

IN THE
CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO: 81-11487 (18)

ELIDA QUINTO de GARCIA, etc.,
Plaintiff,

vs.

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

**AGREED ORDER ON DEFENDANT'S
OBJECTIONS TO INTERROGATORIES**

THIS CAUSE came on before me upon Defendant's Objections to Interrogatories on December 11th, 1981 and the Court noting agreement of counsel and being fully advised in the premises, it is,

ORDERED AND ADJUDGED as follows:

1. As per agreement of counsel, Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY, shall answer Interrogatories #1 through 15 which deal with the issue of jurisdiction and the Court reserves ruling on all the remaining interrogatories. Defendant shall deliver said answers to Plaintiff's counsel by December 29th, 1981.

SA. 2

2. As to Interrogatory #2, Defendant shall give the names and addresses of all charterers of the vessel for the time of the accident to-wit: 1978 and for the present time.

3. As to Interrogatory #5, Defendant shall give the names of all agents in the State of Florida.

DONE AND ORDERED at Miami, Dade County, Florida this 11 day of Dec, 1981.

Judge Sam I. Silver
Circuit Court Judge

copies furnished to:

Joseph C. Martucci
Attorney for Plaintiff

George O. Mitchell
Attorney for Defendants.

SA. 3

IN THE
CIRCUIT COURT OF THE 11th JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO: 81-11487 (18)

ELIDA QUINTO de GARCIA, etc.,
Plaintiff,
vs.

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

**MOTION TO EXTEND TIME WITHIN WHICH TO
RESPOND TO REQUEST FOR ADMISSIONS**

COME NOW the Defendants, by and through their undersigned attorneys, and, pursuant to Rule 1.370, respectfully request this Honorable Court to extend the time for responding to Request for Admissions served by the Plaintiff upon these defendants on or about December 16, 1981, an additional thirty (30) days, or up to and including February 26, 1982, and for reason therefore would show unto the Court as follows:

1. The information necessary to respond to certain of the Request for Admissions must come from supervising counsel in New York City;
2. That due to the intervention of the holidays and the fact that New York counsel for the defendants is moving his offices, the undersigned believe they will not be able to respond to the Request for Admissions within the thirty (30) day time period prescribed by Rule 1.370.

SA. 4

WHEREFORE the Defendants request this Honorable Court to afford thirty (30) additional days, for a total of sixty (60) days, within which to respond to the Request for Admissions filed herein.

WE HEREBY CERTIFY that a true copy of the foregoing was mailed to JOSEPH C. MARTUCCI, Esq., 66 West Flagler Street, Miami, Florida 33130 on this 21 day of December 1981.

Lane, Mitchell & Harris, P. A.
900 Security Trust Building
700 Brickell Avenue
Miami, Florida 33131

By: /s/ George O. Mitchell
George O. Mitchell

IN THE
CIRCUIT COURT OF THE 11th JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 81-11487 (18)

ELIDA QUINTO de GARCIA, etc.,
Plaintiff,

vs.

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

RESPONSE TO REQUEST FOR ADMISSIONS

COMES NOW the Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY, et al., by and through the undersigned attorneys, and pursuant to Rule 1.370 and the other applicable Florida Rules of Civil Procedure, files the following response to the Request for Admissions propounded by the Plaintiff herein on or about December 14th, 1981:

1. Request for Admission No. 1: Admitted that Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY does business in Miami, Dade County, Florida; denied that the accident alleged in Plaintiffs' Complaint arose out of any business transacted by Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY in Florida.

2. Request for Admission No. 2: Objected to on the basis that same seeks responses which are immaterial and

irrelevant to the question of jurisdiction in the instant case.

3. Request for Admission No. 3: denied; sub-paragraph (a) of Request for Admission No. 3 is objected to on the basis that same is overbroad; and calculated to harass rather than lead to information which is relevant to the issue of jurisdiction in the instant case.

4. Request for Admission No. 4: denied; sub-paragraph (a) of Request for Admission No. 4 is objected to insofar as same refers to vessels other than the one alleged in Plaintiffs' Complaint, on the basis that same is overbroad; and not calculated to lead to the discovery of information material and relevant to the issue of jurisdiction in the instant case; said Request for Admission is also calculated to harass and create undue burden upon this Defendant in attempting to answer same.

5. Request for Admission No. 5: objected to on the basis that same is overbroad; and not calculated to lead to discovery of information material and relevant to the issue of jurisdiction in the instant case; said Request for Admission is also calculated to harass and create undue burden upon this Defendant in attempting to answer same.

6. Request for Admission No. 6: Objected to on the basis that same is overbroad; and not calculated to lead to the discovery of information material and relevant to the issue of jurisdiction in the instant case; said Request for Admission is also calculated to harass and create undue burden upon the Defendant in attempting to answer same.

Insofar as Request for Admission No. 6 relates to the subject vessel specified in the Plaintiffs' Complaint, said vessel does not call at any port in Florida and has operated, controlled, and/or chartered outside of Florida.

SA. 7

7. Request for Admission No. 7: Unknown, and therefore denied; with respect to the balance of Request for Admission No. 7, objected to on the basis that same is overbroad; and not calculated to lead to the discovery of information material and relevant to the issue of jurisdiction in the instant case; said Request for Admission is also calculated to harass and create undue burden upon this Defendant in attempting to answer same.

8. Request for Admission No. 8: Denied; Request for Admission No. 8(a): the locus of the accident alleged is available, Guatemala, also, the form of the ship's flag, Holland is also available.

Request for Admission 8(b): see response to 8(a) above.

Request for Admission 8(c): see response to 8(a) above.

Request for Admission 8(d): see response to 8(a) above.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 13th day of January, 1982, to Joseph C. Martucci, Esq., 1002 Concord Building, 66 West Flagler St., Miami, Florida.

Lane, Mitchell & Harris, P.A.
900 Security Trust Building
700 Brickell Avenue
Miami, Florida 33131

/s/ David J. Horr
David J. Horr

SA. 8

IN THE
CIRCUIT COURT OF THE 11th JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 81-11487 (18)

ELIDA QUINTO de GARCIA, etc.,
Plaintiff,

vs.

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

ORDER

THIS CAUSE having come before the Court upon the Plaintiff's Motion to Compel Better Answers to Interrogatories, and the Court having heard argument of counsel and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that the Plaintiff's Motion to Compel Better Answers to Interrogatories is granted with respect to Interrogatory No. 5, and pursuant to said Interrogatory, Defendant shall provide the names and addresses of all agents in the United States at the time of the incident alleged in the Complaint.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida, this 27 day of Jan, 1982.

Judge Sam I. Silver
Circuit Court Judge

Copies furnished to:

David J. Horr, Esq.

Joseph C. Martucci, Esq.

SA. 9

IN THE
CIRCUIT COURT OF THE 11th JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 81-11487 (18)

ELIDA QUINTO de GARCIA, et al.,
Plaintiff,

vs.

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

ORDER

THIS CAUSE came on before the Court upon the Defendant's Motion to Dismiss and the Plaintiff's Motion to Compel and the Court having heard argument of counsel, reviewed the memorandums of Law submitted by both parties, reviewed the file and being fully advised in the premises it is,

ORDERED AND ADJUDGED that:

1. The Plaintiff's Motion to Compel discovery is granted and the Plaintiff is entitled to the following limited discovery by way of request for production and request for admission;

- a. A list of all stockholders of Defendant Royal Netherlands Steamship Company and a list of all stockholders which are United States Citizens;

- b. Business records of Defendant, Royal Netherlands Steamship Company showing the amount of income which the company received from business dealings with the United States, and the percentage of income received by Royal Netherlands Steamship Company from business dealings with connection to the United States in proportion to the total amount of business and income received by Royal Netherlands Steamship Company from 1978 to the present;
- c. Business records as to the base of operations of Royal Netherlands Steamship Company including business records demonstrating what cities and offices where most of Defendant Royal Netherlands Steamship Company's business is controlled or direct [sic] from.

Defendant shall produce these documents within 45 days of the date of this order.

2. The Plaintiff's request to file a supplemental Memorandum of Law is granted and Plaintiff shall file that Memorandum within 5 days after receipt of Defendant's production as ordered in paragraph 1.

3. The Court defers ruling on Defendant's Motion to Dismiss at this time in order to permit Plaintiff and the Court to obtain the above discovery.

DONE AND ORDERED this 24 day of May, 1982.

Judge Sam I. Silver
Circuit Court Judge

copies furnished to all counsel of record

SA. 11

IN THE
CIRCUIT COURT OF THE 11th JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 81-11487 (18)

ELIDA QUINTO de GARCIA, et al.,
Plaintiff,

vs.

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

ORDER

THIS CAUSE came on before the Court upon the Defendants' Motion for Rehearing and/or Motion to Modify the Order entered on May 24, 1982 and the Court having heard argument of counsel, reviewed the file and being fully advised in the premises, it is

ORDERED AND ADJUDGED that the Defendants' Motion for Rehearing and/or Modify be and the same is denied. However, the Court shall limit discovery in 1 b of the order of May 24, 1982 for a period of time of one year prior to and one year subsequent to the accident giving rise to this lawsuit.

Defendants shall produce all of the documents referred to in both this order and the May 24, 1982 order within 45 days of the date of this order.

DONE AND ORDERED this 14 day of June, 1982.

Judge Sam I. Silver
Circuit Court Judge

copies furnished to all counsel of record

SA. 12

IN THE
CIRCUIT COURT OF THE 11th JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 81-11487 (CA 18)

ELIDA QUINTO de GARCIA, etc.,
Plaintiff,

vs.

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

**STIPULATION AND ORDER GRANTING
EXTENSION OF TIME**

WE, the undersigned counsel of record, hereby agree and stipulate to extend Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY, an additional thirty (30) days within which to complete discovery and otherwise comply with the Court's Order entered on June 14th, 1982.

Huggett & Martucci
66 West Flagler Street
1004 Concord Building
Miami, Florida 33130

Lane, Mitchell & Harris, P.A.
900 Security Trust Building
700 Brickell Avenue
Miami, Florida 33131

/s/ Joseph C. Martucci
Joseph C. Martucci

/s/ David J. Horr
David J. Horr

ORDER

THIS CAUSE came on to be heard ex parte upon stipulation for extension of time in which to complete discovery and comply with Court Order, and the Court having considered same and being otherwise fully advised in the premises, it is

ORDERED & ADJUDGED that the foregoing Stipulation for Extension of Time of thirty (30) days, be, and the same is, hereby granted.

DONE & ORDERED at Miami, Dade County, Florida, this 22 day of July, 1982.

Judge Sam I. Silver
Circuit Court Judge

SA. 14

IN THE
CIRCUIT COURT OF THE 11th JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 81-11487 CA 18

ELIDA QUINTO de GARCIA, et al.,
Plaintiffs,

vs.

ROYAL NETHERLANDS STEAMSHIP COMPANY, et al.,
Defendants.

THIS CAUSE came on before the Court upon the Defendant, ROYAL NETHERLANDS STEAMSHIP COMPANY'S, various Motions to Dismiss the Complaint, and upon the Plaintiff's Motion for Default Judgment for the Defendant's refusal to comply with this Court's orders of May 24, 1982, and June 14, 1982, and the Court noting the Defendant's refusal to comply with this Court's orders of May 24, 1982 and June 14, 1982, having reviewed the memorandum of law submitted by both the Plaintiff and Defendant, heard argument of counsel and being fully advised in the premises it is,

ORDERED AND ADJUDGED that:

1. The Defendant's Motions to Dismiss the complaint are denied on all points.

SA. 15

2. The Defendant, ROYAL NETHERLANDS STEAM-SHIP COMPANY, shall file an answer to the Plaintiff's complaint within 30 days of the date of this order.

DONE AND ORDERED this 1 day of Nov, 1982.

Judge Sam I. Silver
Circuit Court Judge

cc: to all counsel of record